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Adjusting the Bright-Line Age of Accountability within the Criminal Justice System: Raising the Age of Majority to Age 21 Based on the Conclusions of Scientific Studies regarding Neurological Development and Culpability of Young-Adult Offenders

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Adjusting the Bright-Line Age of Accountability within the Criminal Justice System: Raising the Age of Majority to Age 21 based on the Conclusions of Scientific Studies Regarding Neurological Development and Culpability of Young-Adult Offenders

Carly Loomis-Gustafson*

ABSTRACT

The criminal justice system determines a criminal actor's liability based primarily on the age of the actor at the time of the offense, adhering to a rule instituted by arbitrary designation of adulthood at the age of eighteen. Solely, this line determines the degree of treatment a criminal defendant will receive within the system, with more punitive measures being reserved for adult offenders and greater rehabilitative efforts made for juvenile offenders. Despite the many concessions made within the criminal system, this rule is concrete and rarely questioned.

However, studies of neurological development show that the part of the brain directly related to the ability to understand choices and consequences, playing a direct role in culpability, does not fully develop until the mid-twenties, three to five years after a person is deemed capable of making mature decisions. This leads to a discrepancy within the criminal system, with youthful adults being forced within the adult system to face potentially negative influences and life-long consequences, though, mentally, they are not any more blameworthy than youthful offenders in the decisions they make.

This article argues that the age of majority within the criminal system should be raised to the age of twenty-one, at a minimum,

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based on strong scientific evidence that indicates there is no significant difference in the brain functioning of young adults between late adolescence and early adulthood. This adjustment is necessary for a developing society concerned with utilizing the receptiveness of young adults to deter further criminal behaviors, reduce recidivism, prevent further victimization, and create more productive members of society.

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I. INTRODUCTION

Currently, the criminal justice system is divided into two parts: the juvenile justice system and the adult criminal justice system.¹ The degree of culpability attached to a criminal defendant is generally determined by the age of majority—age eighteen in most states.

1. See J. Hirby, *Difference Between Juvenile and Adult Justice Systems*, THE LAW DICTIONARY, <http://thelawdictionary.org/article/difference-between-juvenile-and-adult-justice-systems/> (last visited Apr. 2, 2016) (providing a description of the differences between the two systems).

On which side of this bright-line a criminal defendant falls dramatically affects the degree of accountability attributed to the defendant, how he or she is treated within the justice system, and the potential damaging effects of a criminal record. This Article proposes an adjustment to the current age of majority to encompass young adults between the ages of eighteen and twenty-one based on scientific evidence that indicates that a person's decision-making capabilities do not dramatically, or even marginally, change at the age of eighteen. This conclusion is principally due to the wealth of neurological evidence that shows little substantive difference in the brain development of a seventeen-year-old versus an eighteen- or even twenty-year-old.² Moreover, neurological studies show that the area of the brain that allows adults to make responsible, rational decisions is not fully developed until early adulthood, usually around the twenty-two- to twenty-five-year-old age range.³ Therefore, the justice system should view criminal culpability for young adult offenders the same as it does for juvenile offenders, focusing more on rehabilitative efforts with an emphasis on creating responsible adults, rather than punitive measures and retribution. Raising the age of majority as it relates to criminal matters to encompass all adults with limited decision-making capabilities is the most effective way to accomplish this goal.

II. THE CRIMINAL JUSTICE SYSTEM

The criminal justice system is a seldom-shifting monolith; with three main functions divided between the police, the courts, and corrections,⁴ and with each local unit making up a piece of a whole within the United States. Each system attempts to maintain consistency with the others, while also acting separately. Within this system, the age of majority is the rule least likely to fluctuate over time.⁵ What is the purpose of this system of power? The founders

2. See generally Craig M. Bennett & Abigail A. Baird, *Anatomical Changes in the Emerging Adult Brain: A Voxel-Based Morphometry Study*, 27 HUM. BRAIN MAPPING 766 (2006). Perhaps the most dramatic evidence of how the brain continues to develop into adulthood is the onset of certain mental health disorders that do not generally occur until early adulthood, usually between ages eighteen and twenty-one. *Id.* at 775.

3. See generally Beatriz Luna et al., *Maturation of Cognitive Processes from Late Childhood to Adulthood*, 75 CHILD DEV. 1357, 1362–70 (2004).

4. See Off. of Just. Programs, *The Justice System*, BUREAU OF JUST. STAT., <http://www.bjs.gov/content/justsys.cfm> (last visited Apr. 5, 2016) (providing a thorough description of the three functions, and many sub-functions, of the criminal system).

5. See Jeffrey F. Gent, Annotation, *Statutory Change of Age of Majority as Affecting Pre-existing Status or Rights*, 75 A.L.R. 3d 228 (1977). At common law, the age of majority was set at twenty-one. See *id.* at § 2(a). Over time, states have legislatively lowered the age, but remain generally consistent in keeping the age between seventeen and eighteen. See *id.*

of the United States of America declared that each of us, as citizens, possess a right to “life, liberty, and the pursuit of happiness[;]”⁶ unalienable rights within the government’s duty to protect.⁷ Thus, the creation of a criminal system designed to shield us from the poor decisions made by each other and by ourselves. The system cannot be static to be effective, but instead must be dynamic, adjusting to fit the needs of society; working to balance the needs of the victims, through punishment and retribution, with the needs of the criminal defendant, through rehabilitation and recovery.⁸ This is a difficult balance to maintain as societal attitudes fluctuate throughout generations.⁹ Punishment is easy; our laws allow us to imprison a citizen for the duration of his or her life, providing all of the essentials to sustain within the four walls of the prison system.¹⁰ The more difficult route is rehabilitation; specifically in determining when it is worth the time and money to attempt to remold a destructive member of society into a productive one.¹¹

A. *The Beginnings of Criminal Justice in America*

Early criminal justice in America was a construct of the English common law, blended with religious-based principles, and adapted to suit the needs of colonial America.¹² Punishment was a means for stamping out the evils of society, a carry-over of the long-time

6. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

7. *Id.* (“That to secure the rights, governments are instituted among men, deriving their just powers from the consent of the governed.”).

8. See Etienne Benson, *Rehabilitate or Punish?*, 34 MONITOR ON PSYCHOL. 46, 46 (2003). See also Peter D. Hart Research Assoc., Inc., *Changing Public Attitudes toward the Criminal Justice System: Summary of Findings*, OPEN SOC’Y INST. (2002) for a current analysis of the variations in societal attitudes toward crime and punishment.

9. Peter D. Hart, Research Assoc., Inc., *supra* note 8, at 1.

10. See Jean Chung & Ashley Nellis, *Life Goes On: The Historic Rise in Life Sentences in America*, THE SENTENCING PROJECT: RESEARCH & ADVOCACY FOR REFORM (2013) for a thorough analysis of the rise in long-term prison sentences in the United States. The stated mission of the Federal Bureau of Prisons is: “[T]o protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.” *BOP: Agency Pillars*, FED. BUREAU OF PRISONS, https://www.bop.gov/about/agency/agency_pillars.jsp (last visited Apr. 8, 2016).

11. See Jessica M. Eaglin, *Against Neorehabilitation*, 66 SMU L. REV. 189 (2013) for an analysis of the current push for “the rehabilitation of rehabilitation” in the prison system, using “evidence-based programming and predictive tools to create a rehabilitative model that ‘works.’” *Id.* at 189.

12. See James A. Cox, *Bilboes, Brands, and Branks: Colonial Crimes and Punishments*, COLONIAL WILLIAMSBURG, <http://www.history.org/foundation/journal/spring03/branks.cfm> (last visited May 9, 2017).

“eye for an eye” principle found in ancient legal and biblical texts.¹³ Justice was generally swift and public; often painful or deadly, and involving branding, nailing, beating, and hanging.¹⁴ As society evolved, so did the methods for dealing with criminal behaviors, with imprisonment quickly becoming the preferred approach, rapidly creating the “revolving door of punishment” that exists today.¹⁵

Initially, there was no real deviation in how offenders were treated based on age and maturity; children and adults received identical punishments for identical crimes.¹⁶ However, during the nineteenth and twentieth centuries, as children began to be viewed as “persons at a unique stage of human development instead of smaller versions of adults with equal cognitive and moral capacities[.]”¹⁷ society began to recognize a need for treating child offenders differently than adult offenders.¹⁸

This early evolution of the juvenile justice system was the first recognized move toward rehabilitation within the system, focusing more on the “why” of the offender’s poor decisions than on the “what” of the particular criminal behaviors.¹⁹ As early as 1825, administrators and policymakers took up the cry of reform begun by the Society for the Prevention of Juvenile Delinquency, creating facilities exclusively for juveniles in most major cities.²⁰ Leading up to the mid-twentieth century, the juvenile system flourished, with

13. This principle is attributed to a number of legal and spiritual texts, the first being the Code of Hammurabi, an ancient set of laws dating back to the Mesopotamian civilization and said to be the foundation of all criminal punishment principles. *Hammurabi’s Code: An Eye for an Eye*, USHISTORY.ORG, <http://www.ushistory.org/civ/4c.asp> (last visited May 9, 2017). The oft referred to passage states:

If a man has destroyed the eye of a man of the gentleman class, they shall destroy his eye. . . . If he has destroyed the eye of a commoner. . . he shall pay one mina of silver. If he has destroyed the eye of a gentleman’s slave. . . he shall pay half the slave’s price.

Id. The same principle is found in the law of the Old Testament, a subsequent text of laws, in the book of Leviticus: “And if a man cause a blemish in his neighbour; as he hath done, so shall it be done to him; Breach for breach, eye for eye, tooth for tooth: as he hath caused a blemish in a man, so shall it be done to him *again*.” *Leviticus* 24:19–20 (King James).

14. See Cox, *supra* note 12.

15. Rachel O’Connor, *The United States Prison System: A Comparative Analysis* 2 (Mar. 19, 2014) (unpublished Graduate Thesis and Dissertation, University of South Florida) (on file with University of South Florida Scholar Commons, <http://scholarcommons.usf.edu/etd/5086>).

16. Office of Juvenile Justice & Delinquency Prevention, *Chapter 2: Jurisdictional and Program Self-Assessment: Historical Overview of the Juvenile Justice System*, JURISDICTIONAL TECH. ASSISTANCE PACKAGE FOR JUVENILE CORR. 1 (Dec. 2000), https://www.ncjrs.gov/html/ojjdp/juris_tap_report/ch2_01.html.

17. *Id.*

18. *Id.*

19. See *Bulletin: Juvenile Justice: A Century of Change*, NAT’L REPORT SERIES, JUVENILE JUSTICE (Dec. 1999), https://www.ncjrs.gov/html/ojjdp/9912_2/juv1.html.

20. *Id.* at 1.

the primary mission being the desire to help children in need, and which led to the formation of substantive differences between the juvenile and adult criminal systems.²¹

B. The Rise of the "Justice Model"

Preceded by a sharp rise in the national crime rate in the 1960s, the mid-1970s led to an overhaul of the criminal system, juvenile and adult alike.²² Following public outcry for harsher sanctions driven by the fear of potential victimization, the focus turned from the seemingly ineffective rehabilitative model to a system of punishment and retribution.²³ This new system, commonly known as the "justice model," limited the discretion of correctional officials in adjusting the necessary punishment for individual offenders and instead instituted determinate sentencing.²⁴ This push was initiated by some social scientists and analysts who warned of a coming of juvenile "superpredators" they predicted would become a "new breed" of cold-blooded murderers.²⁵ Though it is not evident that such superpredatory juveniles ever materialized, the move toward a more punitive juvenile system did, with the threat of transfer to the adult system being the ultimatum in the tug-of-war between juvenile and adult sanctions.²⁶ A series of decisions based on a perceived need for a harsher juvenile method led to a formalization of the juvenile system, meant to parallel the adult criminal system by using the threat of sanctions as a means of deterrence.²⁷

21. *Id.*

22. *Id.*

23. *Id.*

24. See James C. Howell et al., *Bulletin 5: Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know (Study Group on the Transitions between Juvenile Delinquency and Adult Crime)*, U.S. DEPT OF JUST. 242935, 1 (2013). Determinate sentencing is "[a] jail or prison sentence that is definite and not subject to review by a parole board or other agency." *Determinate Sentence*, NOLO, <http://www.nolo.com/dictionary/determinate-sentence-term.html> (last visited May 9, 2017).

25. *Id.* at 3. "Superpredator" was a term coined by a prevalent political scientist and professor of the time, John J. Delulio, who often wrote about what he predicted to be a likely increase in the juvenile crime rate based on a prevalence of moral depravity within society and juveniles' homes. See John J. Delulio, Jr., *Arresting Ideas*, POL'Y REV. 74 (1996); John J. Delulio, Jr., *The Coming of the Super-Predators*, WKLY. STANDARD 23 (Nov. 27, 1995).

26. See Lisa A. Cintron, *Rehabilitating the Juvenile Court System: Limiting Juvenile Transfers to Adult Criminal Court*, 90 NW. U. L. REV. 1254, 1261 (1996).

27. *Bulletin: Juvenile Justice: A Century of Change*, *supra* note 19, at 3–4.

III. THE RETURN OF THE REHABILITATIVE MODEL

Over time, the pendulum has slowly moved away from the extreme call for harsh punishment for all, juveniles and adults alike, founded in a pessimistic “nothing works” mentality concerning the justice system.²⁸ Policymakers and practitioners have begun to embrace evidence-based corrections and professionalism, with a focus on reducing recidivism and changing behaviors, specifically in youthful offenders.²⁹ However, opinions still vary concerning how the criminal justice system can effectively handle juveniles and young adults with criminal behaviors.³⁰ Though the current dominant policies are agreeable to more rehabilitation-focused methods for all offenders,³¹ a strong line continues to separate late adolescence, typically drawn at the age of eighteen,³² and adulthood when determining a criminal actor’s culpability. Although what constitutes proper treatment within the justice system is regularly debated, especially as it relates to juvenile offenders,³³ the bright-line age of accountability that qualifies a juvenile offender is rarely considered.³⁴ However, studies related to brain development—specifically cognitive development and the maturing processes of the juvenile brain—create a means for calling into question this age of

28. See Francis T. Cullen, *Rehabilitation: Beyond Nothing Works*, 42 CRIME & JUST. 299, 300 (2013). This idea was pioneered by Robert Martinson, who was best known for his 1974 essay published in *The Public Interest* that was “widely understood to show that ‘nothing works’ in correctional programming to reform offenders.” *Id.* Interestingly, Martinson later recanted his position after he conducted a subsequent study, which showed rehabilitation does work in some instances. *Id.* at 328.

29. See *Evidence-Based Practices*, NAT’L INST. OF CORR., <http://nicic.gov/evidencebasedpractices> (last visited May 9, 2017) (“In corrections, Evidence-Based Practice is the breadth of research and knowledge around processes and tools which can improve correctional outcomes, such as reduced recidivism. Tools and best practices are provided with a focus on both decision making and implementation.”).

30. See generally Cullen, *supra* note 28, for an example of the available scholarship related to the differing professional opinions of how juveniles with criminal behaviors should be treated within the criminal system.

31. *Id.* at 307–08.

32. Some states, such as New York, draw the line as young as thirteen years of age for certain offenses, but other states generally set the standard at sixteen years of age. See N.Y. INFANCY LAW § 30.00 (McKinney 2015). Some states, like Alabama, raise the bar to the age of nineteen. See ALA. CODE § 26–1–1 (2015). See also Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547 (2000) for an analysis on the constructs of adolescents through the use of the legal system.

33. See generally Steven A. Drizin & Thomas F. Geraghty, *The Debate over the Future of Juvenile Courts: Can We Reach Consensus*, 88 J. CRIM. L. & CRIMINOLOGY 1 (1997).

34. Although courts in recent years have addressed the need to prohibit mandatory sentencing and transfer laws for juveniles, see *Miller v. Alabama*, 132 S. Ct. 2455, 2475 (2012); *Graham v. Florida*, 560 U.S. 48, 82 (2010); *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005), there has been little to no discussion considering the possibility of changing the legal definition of an infant or juvenile within the system.

majority standard, with convincing evidence that indicates the human brain does not fully develop until early adulthood.³⁵ This casts doubt on the criminal boundaries used to determine degrees of culpability with youthful offenders.³⁶ To be fair, these studies do not indicate a teenager or young adult is not capable of possessing logical reasoning abilities, as the evidence illustrates these competencies are more or less fully developed by the age of fifteen.³⁷ However, they do indicate that the area of the brain affecting impulse control, emotion regulation, delayed gratification, and the effect of peer influences continues to develop for several years after the age of eighteen, well past the legal boundary of adulthood.³⁸

The consensus among neurologists and social scientists, who focus their studies on brain maturation, is that, due to this delay in development, young adults, like juveniles, may have a lesser degree of culpability than older adults, and the criminal justice system should, therefore, treat them differently.³⁹ One example of this developmental delay is in how the preventative measures and deterrence programs used within our communities geared toward youth and young adults have been shown to lead to an increased awareness of risky behaviors, but cause no real behavioral changes, and, in fact, may exacerbate the troublesome behaviors.⁴⁰ The juvenile justice system has incorporated these ideas in recent years, taking baby steps through legislative and judicial actions to reconcile the lack of decision-making skills in juvenile offenders with the degree of adjudication, in an attempt to circumvent the juvenile's path to life-long criminality.⁴¹ Administrators within the juvenile system

35. See generally Luna et al., *supra* note 3.

36. *Id.*

37. See Laurence Steinberg, *Risk Taking in Adolescence: New Perspectives From Brain and Behavioral Science*, 16 CURRENT DIRECTIONS PSYCHOL. SCI. 55, 55 (2007).

38. *Id.* at 56.

39. See generally Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009 (2003).

40. Steinberg, *supra* note 37, at 55 ("Efforts to provide adolescents with information about the risks of substance use, reckless driving, and unprotected sex typically result in improvements in young people's thinking about these phenomena but seldom change their actual behavior.").

41. For example, the juvenile justice system has increased the use of risk/needs assessments as an attempt to develop individualized programing for offenders. See Dev. Servs. Grp., Inc., *Risk/Needs Assessments for Youths*, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION 1, 2 (Jan. 2015), <http://www.ojjdp.gov/mpg/litreviews/RiskandNeeds.pdf>.

have embraced a new mantra, believing that, with appropriate rehabilitative methods, and “given time to deliberate with guidance from mature adults, adolescents can make responsible decisions.”⁴²

Despite the changes in the juvenile system, there has been little significant change within the adult criminal system related to young adult offenders, notwithstanding consensus within the scientific community that the behaviors and decision-making skills of a young adult—typically those between the ages of eighteen and twenty-five—more closely align with those of juvenile offenders than of adult offenders.⁴³ Studies addressing criminal behaviors of young adults parallel this understanding, showing the age of seventeen to twenty to be the peak of the poor-decision-making bell curve, known within the community as the “age-crime curve.”⁴⁴ This effect demonstrates that the prevalence of offending increases from late childhood, peaking directly on the boundary of the bright-line age of adulthood (seventeen to nineteen) before beginning to decline in the early twenties.⁴⁵ Subsequently, a study focusing on the likelihood of the continuation of criminal behaviors of youth found that more than fifty percent of juvenile offenders would continue their criminal behavior during early adulthood (ages twenty to twenty-five), but that percentage drops dramatically, by two-thirds, between ages twenty-five and thirty.⁴⁶

This Article aims to accomplish two main objectives: (1) call into question the continued adherence to the age of majority as it relates to criminal behaviors, despite the abundance of scientific information indicating the need for a shift of this bright-line rule; and (2) propose changes within the system to reconcile this information with the public policy reasoning behind appropriate sanctions.

IV. RECONCILING THE NEED FOR PUNISHMENT WITH THE DESIRE FOR REHABILITATION

The two methods utilized within the criminal justice system, punishment and rehabilitation, are dynamic, fluctuating over time. Though rehabilitation is favorable to the public when it is most effective, rarely does it take precedence over the desire to compensate

42. Beatriz Luna, *The Relevance of Immaturities in the Juvenile Brain to Culpability and Rehabilitation*, 63 HASTINGS L.J. 1469, 1469 (2012).

43. See Rolf Loeber, David P. Farrington & David Petechuk, *Bulletin 1: From Juvenile Delinquency to Young Adult Offending (Study Group on the Transitions between Juvenile Delinquency and Adult Crime)*, U.S. DEP'T OF JUST. 242931 (2013).

44. *Id.* at 3.

45. *Id.*

46. *Id.* at 5. The study also indicated that the persistence of criminal behavior changes depending on the type of offense, with the highest likelihood being for drug offenses. *Id.*

the victim, whether through retributive or pecuniary measures.⁴⁷ Perhaps this is due to a fear of failure in balancing the needs and desires of the community with the potential, but not guaranteed, positive result of rehabilitation of the offender, leading to an overabundance of caution in determining the appropriate methodology. The separation of the juvenile and adult systems was the first real step taken in finding a comfortable balance.⁴⁸ The intention driving this separation, based on the understanding that juveniles do not have the decision-making capabilities of adults, helped manifest a juvenile system designed to serve the needs of the perpetrators, theoretically making them productive, law-abiding adults.⁴⁹ Society is seemingly more open to rehabilitative methods within the juvenile system because of the innate understanding that children are not adults, with some underlying cause driving their poor behaviors, and therefore they should be treated differently. Naturally, a line needs to be drawn in order to distinguish between less blameworthy juveniles and culpable adults, but that line was originally drawn based on the common law and statutory practices of the state, not behavioral and neurological science, when determining the age of majority.

A. *The Bright-Line Age of Majority*

At common law, courts set the age of majority at twenty-one following court decisions related to parental custody and financial support.⁵⁰ The age of majority eventually began to change statutorily, intended to coincide with the age most children were no longer in school, and, thus, able to begin working, start families, join the military, and vote.⁵¹ That transition has led to a presumptive age of majority settling at or around the age of eighteen, a time when adolescents are usually defined as being at one of two ends of a maturity spectrum—either as an undeveloped child or a mature adult—“depending upon the desired classification.”⁵² Though it

47. See generally Michelle S. Phelps, *Rehabilitation in the Punitive Era: The Gap Between Rhetoric and Reality in the U.S. Prison System*, 45 LAW & SOC'Y REV. 1, 33–68 (Mar. 2011).

48. See Drizin & Geraghty, *supra* note 33, at 1–2.

49. See Gloria Danziger, *Delinquency Jurisdiction in a Unified Family Court: Balancing Intervention, Prevention, and Adjudication*, 37 FAM. L.Q. 381, 388 (2003).

50. See, e.g., *Stanton v. Stanton*, 429 U.S. 501, 503–04 (1977) (holding that a statutory distinction between males and females related to the age of majority violated the Equal Protection Clause of the United States Constitution).

51. See Gent, *supra* note 5, at 2; see also Sen. Birch Bayh, S. COMM. ON THE JUDICIARY, LOWERING THE VOTING AGE TO 18, S. REP. NO. 92–96 (1971).

52. Scott, *supra* note 32, at 556, 559.

seems evident based on current neurological science that there is no significant difference in the neurological development of a person who falls directly on either side of this bright-line age of eighteen, both advocates and lawmakers tend to ignore the realities of adolescence “and endorse fictional accounts in which adolescents are either immature children . . . or mature adults.”⁵³ Adjusting the age of majority is more likely to occur through a decrease in the age of majority, as occurred with the voting age in the twenty-sixth amendment to the United States Constitution,⁵⁴ because it is a seemingly more comfortable prospect. It seems that society has been more willing to accept stricter sanctions for older youth in the hope of safeguarding the community, even potentially at the expense of turning a rehabilitative youth into a lifetime criminal offender.

1. *Neurological Sciences*

The field of neurology provides a wealth of information concerning the decision-making capabilities of juveniles and young adults, demonstrated through studies focusing on the development of the brain as it relates to maturity. These studies ultimately conclude adolescent brain development may be linked to late maturation of the prefrontal cortex.⁵⁵ For example, a study conducted out of the University of Pittsburgh assessed processing speeds, voluntary response suppression, and spatial working memory, all of which are

53. *Id.* at 557. One instance is the juvenile to criminal transfer laws. After the push for harsher punishments, the laws were changed to allow for juvenile transfer to adult courts, typically according to the degree of the offense, to ensure the punishment would fit the crime. See Danziger, *supra* note 49, at 383–84.

54. See Sen. Birch Bayh, *supra* note 51. The greatest factor in the push to reduce the voting age was the discrepancy between the voting age and the draft age during the Vietnam War. *Id.* at 6. But, even at this time, the age of eighteen had long been regarded as the presumed age of majority. As Montana Senator Michael J. Mansfield noted, the age of eighteen had long been regarded as the age at which young people assume economic and social responsibilities of adults. *Id.*

55. Luna et al., *supra* note 3, at 1368. These studies focus primarily on two processes: brain maturation, such as synaptic pruning, which is described as “the selective elimination of unnecessary neuronal connections . . . [that] can speed and enhance the precision of information processing[.]” and myelination, which “allows for faster responses and for superior integration of widely distributed circuitry necessary for the top-down modulation of behavior.” *Id.* at 1358, 1369. Synaptic pruning occurs in order to eliminate unused synaptic connections created through childhood and into adolescence, allowing the brain “to most optimally adjust to the individual’s environment.” Luna, *supra* note 42, at 1475. Synaptic pruning and myelination, when viewed as a parallel process, indicate that adolescence is “marked by refinements across the brain that support integration of information and thereby foster higher-order cognitive processes.” *Id.* at 1477.

essential for cognitive control of behavior.⁵⁶ The clinicians concluded that adult level, mature performance typically *begins* at approximately age fourteen to nineteen and plateaus between late adolescence and early adulthood, though it is still unknown when exactly it reaches peak maturation.⁵⁷ The same study noted that neuroimaging results also indicate that the period of development for reaching adult levels of performance is characterized by improvements in existing processes via progressively more efficient use of brain circuitry.⁵⁸ This indicates a correlation between the performance levels of the brain circuitry, especially in the prefrontal cortex, with maturity in behavioral control.⁵⁹ Researchers from Harvard Medical School, the National Institute of Mental Health, and the University of California, Los Angeles School of Medicine, conducted studies and found evidence contrary to that which is commonly understood about the maturity of older youth; that the brain is fully mature by early adolescence.⁶⁰ These studies focused on the prefrontal cortex, the “chief executive officer” of advanced cerebral activities.⁶¹ The results indicate that rather than the essential wiring being complete in early childhood, as was the current understanding, the brain develops in spurts throughout childhood and adolescence, meaning the teenage brain is not a “finished product,” but rather a “work in progress” continuing well into early adulthood.⁶²

Laurence Steinberg, a lead researcher of the juvenile brain and its processes,⁶³ not only recognizes the legitimacy of the synaptic pruning and myelination results,⁶⁴ but also attributes the problem to an enlarged nucleus accumbens, which is the reward circuit of

56. Luna et al., *supra* note 3, at 1358.

57. *Id.* at 1366. These results were based on the use of 245 participants ranging from age eight to age thirty. *Id.* at 1359.

58. *Id.* at 1369.

59. *Id.*

60. Howell et al., *supra* note 24, at 17. This research was conducted using magnetic resonance imaging (MRI) to measure brain development. *Id.*

61. *Id.* at 18.

62. *Id.* at 17.

63. Elizabeth Kolbert, *The Terrible Teens: What's Wrong with Them?*, NEW YORKER (Aug. 31, 2015), <http://www.newyorker.com/magazine/2015/08/31/the-terrible-teens> (discussing Steinberg's work in neurological studies of the adolescent brain). Steinberg is a professor of psychology at Temple University and the author of *Age of Opportunity: Lessons from the New Science of Adolescence*. Department of Psychology: Laurence Steinberg, TEMPLE UNIV., <http://www.cla.temple.edu/psychology/faculty/laurence-steinberg/> (last visited Jan. 22, 2015).

64. See *supra* text accompanying note 55 for a brief explanation of these processes.

the brain involved in motivation, reward, motor function, and learning.⁶⁵ Steinberg attributes two processes as contributing to reward-seeking behaviors in youth: (1) the growth of the nucleus accumbens, at its largest during adolescence before shrinking in early adulthood; and (2) an increase in dopamine⁶⁶—the chemical in the brain that allows a person to seek rewards and take actions to attain them—levels which also peak in adolescence and do not decrease until adulthood.⁶⁷ Moreover, the same peak in dopamine that makes dangerous behaviors so appealing also increases an adolescent's ability to learn and to rehabilitate, with the peak in the production of dopamine meeting exactly with the age of majority.⁶⁸ This indicates that the deficiency in the youthful brain that makes a child more destructive also makes him or her more amenable to treatment, and possibly long-term behavioral change, which makes adolescence and young adulthood the ideal time for rehabilitation.

Explaining why adolescents do so many "stupid things," Steinberg emphasizes that the problem behavior does not lie with a lack of knowledge, finding this idea "ludicrous," but instead that the effects of pleasure-seeking behavior far outweigh the brain's solidly present warning signals.⁶⁹ Steinberg sees evidence of this discrepancy through mortality rates, in a phenomenon called the "accident hump."⁷⁰ The accident hump shows that adolescents, who are healthier mentally and physically than younger children, have a higher death rate attributed to accidental deaths.⁷¹ For example, the mortality rate of fifteen- to nineteen-year-old Americans is "nearly twice" that of those between ages five and fourteen.⁷² Steinberg and others seem to recognize this as evidence of the young mind's consistent inability to make the right decision at the right time, even when the youth has the knowledge to do so.⁷³

65. See generally Yukihiko Shirayama & Shigeyuki Chaki, *Neurochemistry of the Nucleus Accumbens and its Relevance to Depression and Antidepressant Action in Rodents*, 4 CURRENT NEUROPHARMACOLOGY 277 (2006).

66. "Dopamine is a neurotransmitter that acts on synapses in the frontal cortex and the ventral striatum, a nucleus in the limbic system of the brain that plays a crucial role in motivated behavior." Luna, *supra* note 42, at 1477.

67. Kolbert, *supra* note 63, at 3–4; see also Luna, *supra* note 42, at 1477.

68. Luna, *supra* note 42, at 1477.

69. Kolbert, *supra* note 63, at 4.

70. *Id.*

71. *Id.*

72. *Id.* For an extensive analysis on the accident hump, see The Human Mortality Database (HMD), which was created "to provide detailed mortality and population data to researchers, students, journalists, policy analysts, and others interested in the history of human longevity." *The Human Mortality Database*, MORTALITY, <http://www.mortality.org> (last visited Dec. 28, 2015).

73. See generally Kolbert, *supra* note 63.

2. Behavioral Sciences

Studies in the field of behavioral sciences tend to come to similar conclusions, consistently showing that adolescents differ from adults in three important ways: (1) they lack the mature capacity of self-regulation in emotionally charged contexts; (2) they have a heightened sensitivity to proximal external influences; and (3) they show less ability to make judgments and decisions that require future orientation.⁷⁴ As a result, these differences lead to a prevalence of risky behaviors, rising by a third until the age of sixteen, and declining by a half of standard deviation by age twenty-six.⁷⁵ Moreover, these risky behaviors dramatically increase in the presence of other peers, with the most substantial increase among teenagers, but also a moderate increase among college-age individuals.⁷⁶ Based on this information, it is evident that the cognitive development of a juvenile is not complete in late adolescence, or even into early adulthood. It is a natural conclusion then, based on the ever-increasing available information, that one does not flip a switch and turn on mature thinking and behaviors at the age of eighteen, or even twenty-one. This is not to say that adolescents and young adults cannot make mature decisions; rather, they “might be mature enough to make some decisions[,] but not others.”⁷⁷

Some studies observing developmental improvements in executive function, or the ability to generate planned voluntary responses to stimuli, indicate that basic cognitive abilities are available early in life, but “sophisticated use” of these abilities continues to improve through adulthood.⁷⁸ Specifically, the ability to perform complex tasks continues to develop, become more precise, and control distractions, like the distraction of encouragement by peers.⁷⁹ What makes this information relevant is that intent, as an element of culpability, requires the demonstration of executive control for a willful act, engaging multiple behavioral and cognitive processes.⁸⁰ Can a youth, being incapable of having full executive control over

74. See RICHARD BONNIE ET AL., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 95, 97 (2012).

75. *Id.* at 91.

76. See Steinberg, *supra* note 37, at 57.

77. Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 28 ISSUES SCI. & TECH. 67, 71 (2012).

78. Luna, *supra* note 42, at 1474.

79. *Id.*

80. *Id.* at 1470.

his or her decision-making capabilities, paired with increased vulnerability to sensation-seeking, ever be truly culpable?⁸¹ The prevalent scientific evidence calls this idea into question.

B. Systematic Adjustments for Youthful Offenders

The United States Supreme Court recognized the differences in the culpability of youthful and adult offenders as early as the 1980s.⁸² Relying on the prevalence of emerging studies like those previously mentioned, the Supreme Court began making adjustments to the boundaries in the disposition of juvenile offenders transferred into the adult system.⁸³ First, the Supreme Court took the greatest step toward eliminating unconstitutionally harsh sanctions of youthful offenders by holding that an offender who was under the age of eighteen at the time of the criminal act could not receive a death sentence.⁸⁴ The Court then quickly extended these protections to include mandatory life sentences, for violent and non-violent offenders, holding these sentences to be “grossly disproportionate” to the offense committed, and, thus, a violation of the Eighth amendment.⁸⁵ For example, in *Roper v. Simmons*, a seventeen-year-old male committed capital murder and was sentenced to death.⁸⁶ The Court, finding the sentence unconstitutional, rationalized the ruling by pointing out the Court’s previous acknowledgement of the low likelihood that offenders under sixteen engaged in “the kind of cost-benefit analysis that attaches any weight to the possibility of execution” made the death penalty ineffective as a means of deterrence.⁸⁷ Subsequently, the Court noted that the

81. *Id.* at 1470–72.

82. *Thompson v. Oklahoma*, 487 U.S. 815, 823 (1988) (determining that standards of decency did not permit the execution of an offender who was under the age of sixteen during the commission of the crime).

83. *See, e.g., Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012). In its discussion of precedent regarding the societal changes in attitudes toward harsh sanctions, such as life imprisonment, for juveniles, the Court referred to its decision in *Roper v. Simmons*, and acknowledged these studies by stating: “Our decisions rested not only on common sense—on what ‘any parent knows’—but on science and social science as well.” *Id.* at 2464 (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

84. *See Roper v. Simmons*, 543 U.S. 551, 578 (2005). The Supreme Court’s reasoning behind the decision paralleled that of the cognitive behavioral studies: an underdeveloped sense of responsibility, susceptibility to outside influences, and a poorly formed character. *Id.* at 569–70.

85. *See* U.S. CONST. amend. VIII; *Miller*, 132 S. Ct. at 2464 (relying on the rationale from *Roper*, and determining that the imposition of a life sentence without the possibility of parole for juvenile homicide offenders violated the Eighth Amendment); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (holding mandatory sentences of life imprisonment for non-homicidal offenses violates the Eighth Amendment).

86. *Roper*, 543 U.S. at 551.

87. *Id.* at 561–62 (quoting *Thompson*, 487 U.S. at 836–38).

same rationale applied equally to all juvenile age offenders.⁸⁸ This was a clear recognition by the Court that the use of extreme sanctions as deterrence, specifically the threat of the death penalty or life in prison, does not consistently work with young offenders.⁸⁹

It is evident through these rulings that the Supreme Court takes into great consideration the deficiencies of the youthful brain as it relates to proper decision-making, and more so, that a youthful mind has a greater potential for rehabilitation and redemption. Despite whether or not it was the intention of the Court, these ideas, as supported by neurological and behavioral studies, indicate a desire to give young offenders every opportunity to redeem themselves, en route to becoming productive members of society. On the surface, this is what the criminal justice system claims to be about. However, it should be noted that these rulings only apply to the most extreme sentences and only prohibit *mandatory* sentencing, meaning some juveniles can and do spend the majority of their lives serving sentences for crimes committed as children.⁹⁰

Despite the judicial changes made to juvenile sentencing, the same cannot be said for offenders over the age of majority, even as it relates to juvenile offenses.⁹¹ As the Supreme Court first recognized in *Atkins v. Virginia*, concessions are made for adults who are classified as “mentally retarded,” as the courts appreciate that the mentally challenged have a lesser degree of culpability based on their mental disabilities.⁹² In *Atkins*, the Court held that committing a mentally challenged individual to death, even when only mildly disabled, was a violation of the Eighth Amendment as cruel

88. *Id.* at 568 (“A majority of States have rejected the imposition of the death penalty on juvenile offenders under [eighteen], and we now hold this is required by the Eighth Amendment.”).

89. The evidence is somewhat conflicting in this area. Two studies conducted in the 1980s show no deterrent effect, while the bulk of studies conducted from the 1970s through the 1990s show that criminal sanctions in general have a moderate deterrent effect on juvenile crime. However, the bulk of empirical studies show that transfer laws specifically have little to no effect on juvenile crime rates. Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION 2 (2010).

90. Some states still require judges to sentence individuals, juvenile and adult, without consideration of any factors relating to age or life circumstances, as well as requiring that all juveniles charged with homicide be tried in the adult system. See Ashley Nellis, *The Lives of Juvenile Lifers: Findings from a National Survey*, THE SENTENCING PROJECT 3 (2012).

91. See generally *United States v. Coleman*, 563 F. App'x. 740 (11th Cir. 2014) (allowing juvenile adjudications as qualifying convictions for disposition purposes).

92. *Atkins v. Virginia*, 536 U.S. 304, 306 (2002).

and unusual punishment.⁹³ As the ruling in *Atkins* shows, the Supreme Court mirrors the progression of public opinion regarding how certain individuals should be treated, embracing a “consistency of the direction of change.”⁹⁴ Interestingly, the *Atkins* rationale was also used in *Roper*, where the court made a correlation between the culpability of the mentally retarded and juvenile offenders as similarly not on par with the average adult.⁹⁵

As the *Atkins* Court indicated, mental disability does not eliminate the need for accountability; however, greater consideration should be taken because “by definition, [the mentally disabled] have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. Their deficiencies . . . diminish their personal culpability.”⁹⁶ Though the similarities are clear, it is not my intention to suggest that the mental capabilities of an 18-year-old young adult are equivalent to the mentally disabled, but instead to attempt to draw attention to the willingness of the court system to be amenable to changes in the criminal system due to reduced personal culpability based on documented diminished capacities. Although there may be a difference between the mentally disabled and the youthful offender’s capacity to mature and respond positively to rehabilitation, this potential for change does not negate the similarities between the two at the critical moment of decision making related to possible criminal activity.

The juvenile brain’s sensitivity to social influences makes the focus on rehabilitation in these years the key to encouraging substantive behavioral changes.⁹⁷ The current criminal justice system dramatically shifts the focus from determent and rehabilitation to punishment and retribution at the age of eighteen, the exact age when, as some studies show, there is a peak in sensitivity to peer influences; both negative and positive.⁹⁸ It is clear that the current

93. *Id.* at 318–19. The Court in *Atkins* made it a point to note that being able to distinguish right from wrong was not a consideration in determining culpability because the mentally disabled can usually determine right from wrong, but they often have other difficulties, such as faulty logical reasoning skills and impulse control, which direct the limitation. *Id.* at 317–19.

94. *Id.* at 315.

95. *Roper v. Simmons*, 543 U.S. 551, 567 (2005) (citing *Atkins*, 536 U.S. at 316) (“As in *Atkins*, the objective indicia of national consensus here . . . provide sufficient evidence that today society views juveniles, in the words *Atkins* used respecting the mentally retarded, as ‘categorically less culpable than the average criminal[.]’”).

96. *Atkins*, 536 U.S. at 318.

97. BONNIE ET AL., *supra* note 74, at 93–94.

98. *Id.* at 94.

structure of the criminal justice system requires moving highly susceptible brains into an extremely negative, adult-driven environment, leaving young adults even less likely to have a positively motivated experience that encourages behavior modification. In fact, studies focused on the effects of the transfer of juveniles to the criminal system report that transferred juveniles not only have higher rates of reoffending, but also committed more serious offenses than their peers who remained in the juvenile system.⁹⁹ This finding does not indicate that rehabilitative efforts are not made with young adults in the criminal system, but it is widely understood within the criminal justice community that rehabilitation does not take priority over a punitive corrections philosophy.¹⁰⁰

1. *Use of Rehabilitation within the Juvenile System*

Rehabilitation was a key part of the prison system from the early 1900s until the mid-1970s.¹⁰¹ However, the focus shifted within the United States following the crime-rate increase of the 1960s, and the prison system became primarily concerned with punishment, leading to a dramatic increase in incarceration rates.¹⁰² In the years following this shift, there has been a battle of opposing ideas, with one side moving toward a return to the rehabilitative model, relying on studies that show cognitive-behavioral based systems tend to have the greatest success in reducing recidivism.¹⁰³ The juvenile justice system has seized upon this understanding, using the prevalent scientific knowledge of the underdeveloped mind to take a different approach in adjudication of juveniles, focusing on reducing exposure to the criminal system by weeding out low-risk youth through the use of risk/needs assessments.¹⁰⁴ The premise behind the assessment process is that high-risk youths need greater involvement and intervention, while low-risk youths need minimal intervention in an attempt to prevent further criminalization through exposure to the criminal system.¹⁰⁵

99. See Emily Ray, *Waiver, Certification, and Transfer of Juveniles to Adult Court: Limiting Juvenile Transfers in Texas*, 13 SCHOLAR 317, 344 (2010). This article relied on information from the Center for Disease Control and Prevention, where studies reported that transferred juveniles were thirty-four percent more likely to be rearrested for violent or other crimes. *Id.*

100. Benson, *supra* note 8, at 46.

101. See Francis T. Cullen & Paul Gendreau, *Assessing Correctional Rehabilitation: Policy, Practice, and Prospects*, 3 CRIM. JUST. 109, 109 (2000).

102. Benson, *supra* note 8, at 46.

103. Cullen & Gendreau, *supra* note 101, at 110.

104. Dev. Servs. Grp., Inc., *supra* note 41, at 1.

105. *Id.* at 4.

The same scientific evidence that demonstrates that juveniles are still moldable and susceptible to outside influences also shows that this development does not end at the age of eighteen, so the same approach taken with juveniles—cognitive-based rehabilitation and individualized consideration in punishment—could be extended to young adult offenders. That said, why is the current system of rehabilitation through incarceration, as is implemented in the adult system, not sufficient for young adult offenders? The alternative mirrors our current criminal system; because the brain is still highly susceptible to outside influences, the bad influences through involvement in the adult criminal system will potentially outweigh the good that is done through the moderate rehabilitation efforts. Ultimately, the susceptibility of the juvenile brain to peer influences that makes rehabilitation so effective may backfire when the youth is placed in a negative environment, such as the adult prison system.

2. *Impact of Prison on a Youthful Mind*

Studies related to the effect of prison on young adults over the age of eighteen are scarce. Therefore, we must rely on studies of the effects of criminal prosecution on juvenile offenders and make a correlation with the outcome to young adults. These statistics, comparing juveniles transferred to criminal courts with those who remain in juvenile court, generally show that the recidivism rate of this age range in the juvenile system is much lower than the same age range in the adult system. Some studies show the success rate is as high as eighty percent for youth who remain in the juvenile system, while the recidivism rate of young adults in the criminal system becomes dramatically higher the closer a person is to the age of eighteen at the time he or she becomes involved in the system.¹⁰⁶

For example, a study conducted on a population in the Texas prison system subdivided male age groups within the adult system, rather than the standard lumping together of juveniles and adults into two categories.¹⁰⁷ This study noted several interesting observations, namely the significant proof that the youngest age group, eighteen to twenty-four, had higher parole failure rates than older

106. See *Uniform Crime Reports: Crime in the US 2010: By Age Table 38*, FED. BUREAU OF INVEST., <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl38.xls> (last visited Sept. 19, 2015).

107. Kyung Yon Jhi & Hee-Jong Joo, *Predictors of Recidivism Across Major Groups of Parolees in Texas*, 6 JUST. POL'Y J. 1, 10 (2009) (analyzing recidivism rates by age range).

adult categories.¹⁰⁸ This study also found a relationship between history of revocations, prior incarceration, employment history, commitment offense, education or training in prison, and offense severity.¹⁰⁹ Of these variables, education or training in prison was a significant predictor of reduced recidivism only for the age group composed of eighteen- to twenty-four-year-olds.¹¹⁰ Through these findings, the authors inferred that educational programs in prison are not typically beneficial, with the only exception being younger inmates.¹¹¹ These results make sense when paired with the knowledge we now have about the youthful mind's susceptibility to outside influences. Through the use of this study, the argument can be made that young adult offenders, like juvenile offenders, are affected by the atmosphere of incarceration in similar ways, developing "distorted views of their identities" and "learning anti-social behaviors from the inmates around them,"¹¹² having the opposite effect of that which is intended—deterrence.

Other studies show that juveniles in the adult prison system have limited exposure to social norms and are limited in their ability to develop a diverse behavioral toolkit from the wider social networks of family, school or work, and community.¹¹³ "Instead, juveniles incarcerated with adults may learn social behavior that legitimizes 'domination, exploitation, and retaliation.'"¹¹⁴ Additionally, these juveniles have an increased rate of suicide, being thirty-six percent more likely to commit suicide in an adult prison versus a juvenile facility,¹¹⁵ and are at a greater risk of post-traumatic stress disorder and depression.¹¹⁶ As these findings indicate, there are far greater concerns than just recidivism with young offenders placed in a correctional environment, specifically concerns related to long-term mental and emotional health.

108. *Id.* at 15; the adult-age offender age categories and parole failure rates are as follows: ages 18–24 at 58%; ages 25–34 at 49.1%; ages 35–44 at 56.5%; and ages 45+ at 43.7%. *Id.* at 11.

109. *Id.* at 15.

110. *Id.* at 19.

111. *Id.* The researchers also inferred that education and training might be more effective for younger individuals because they have a smaller criminal record, but this was not directly tested. *Id.*

112. Ray, *supra* note 99, at 320.

113. *Id.* at 347.

114. *Id.* (citing Enrico Pagnanelli, Note, *Children as Adults: The Transfer of Juveniles to Adult Courts and the Potential Impact of Roper v. Simmons*, 44 AM. CRIM. L. REV. 175, 184 (2007)).

115. *Id.* at 343.

116. See Carly B. Dierkhising, Andrea Eastman & Misaki N. Natsuaki, *Victims Behind Bars: A Preliminary Study of Abuse During Juvenile Incarceration and Post-Release Social and Emotional Functioning*, 20 PSYCHOL. PUB. POL'Y & L. 181, 183 (2014).

One of the greatest long-term benefits of the juvenile system is the impact, or lack thereof, of a juvenile record compared to that of a criminal record. A juvenile record is not readily available to the public in most instances, and is not a legal mandatory disclosure for job applications.¹¹⁷ Rehabilitation and reduced recidivism means very little if the long-term impact of the criminal behavior can never be mitigated. In a three-year study conducted by the Arizona State University School of Criminology and Criminal Justice on the impact of a prison record on employment, the conclusion was disheartening, to say the least.¹¹⁸ The researchers concluded that a prison record has a “dampening effect on job prospects,” particularly in the low-skill food service sector, where ex-prisoners are more likely to seek employment after release.¹¹⁹ Unsurprisingly, most employers in the study expressed a preference for hiring individuals with no prior criminal history.¹²⁰ Employers also associated employees who had served prior prison time with “a number of negative work-related characteristics” including tardiness and the inability to get along with co-workers, demonstrating that the stigma surrounding a person with a criminal record is not easily diminished, regardless of the specific details surrounding each offender’s individual situation.¹²¹

We could apply these findings to young adults who are placed in criminal facilities based solely on the age of majority rule. The public policy reasons for reducing the transfer of youthful offenders to the criminal system, coupled with the need to guard the youth of our society while they grow and mature for the purpose of molding more productive members of society, should apply equally to the element of society caught between youth and adulthood, specifically the eighteen- to twenty-one-year range, when the exposure is likely to have an equal disparate impact.

C. *The Opposing View*

As public policy consistently straddles the line between retribution and rehabilitation, administrators and legislators take baby

117. 18 U.S.C. § 5038(a) (2012) (“Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an *application for employment*, license, bonding, or any civil right or privilege.”) (emphasis added).

118. See generally Scott H. Decker et al., *Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment*, U.S. DEPT OF JUSTICE, 244756 (2010).

119. *Id.* at 1–2.

120. *Id.* at 2.

121. *Id.*

steps in correcting the system, responding to public outcry or reaction to public events. To propose a giant step, such as raising the age of majority for criminal prosecution, would likely result in backlash. This opposition derives from the idea that society still prefers the “justice model,” with a focus on punitive measures before rehabilitative approaches.¹²² It appears that much of society wants justice at any cost, making it difficult to persuasively push for an increase in rehabilitative efforts as the key to societal change. Though it is evident that the pendulum is slowly returning from the pessimistic “nothing works” mentality about the justice system to the use of rehabilitation and correctional intervention in an attempt to reduce recidivism, there are certain steps we may still be unwilling to take.¹²³ Admittedly, some research shows a small percentage of young offenders become “life-course” defendants regardless of the nature of intervention, justifying, in some, the belief that an overly-aggressive approach is the best approach.¹²⁴

From an economic standpoint, a popular argument for the current structure of the criminal system is connected to the higher cost of keeping young adults in the juvenile system for a longer period of time.¹²⁵ The estimated cost of detaining a juvenile for one year is four times higher than keeping an adult in prison for the same amount of time.¹²⁶ This cost analysis has led to double the number of states with statutory transfer laws.¹²⁷ Understandably, the excess cost is due to the primary purpose of the juvenile system: to provide educational, therapeutic, and rehabilitative services, ultimately requiring a greater number of staff to offer a safer, more therapeutic environment.¹²⁸ This cost discrepancy is the primary consideration in the benefit-cost analysis, designed to “help policy-makers understand which policies generate benefits to society that are large enough to justify a program’s costs.”¹²⁹ Courts frequently use this benefit-cost analysis, alongside other non-economic factors, in determining whether or not a juvenile should be transferred to the adult system.¹³⁰ Society may often find it difficult to justify spending additional tax dollars on a program that may not benefit

122. Howell et al., *supra* note 24, at 1.

123. Cullen, *supra* note 28, at 299.

124. Loeber, *supra* note 43, at 1–2.

125. See Jens Ludwig, Roseanna Ander & Laura Brinkman, Conducting Benefit-Cost Analysis of Juvenile Court Jurisdiction and Other Juvenile Justice Policies 2 (Dec. 21, 2009) (University of Chicago).

126. *Id.*

127. *Id.* at 2–3.

128. *Id.*

129. *Id.* at 6.

130. *Id.*

society as a whole. The expense of incarceration and rehabilitation is easier to quantify than the possible outcome of a positive correctional environment on an individual, making it a more attractive consideration when justifying criminal policies.

However, in a study conducted in Texas, where the age of majority for criminal activity is seventeen, researchers analyzed the potential cost of raising the age of majority by one year, and indicated a financial benefit in the long run.¹³¹ In this study, researchers considered short- and long-term effects on the juveniles, victims, and taxpayers, estimating an eventual net benefit of \$88.9 million for every cohort moved into the juvenile system.¹³² But, the researchers noted that this policy change would require an initial investment of \$50.9 million per cohort,¹³³ making it a bit less convincing in the short-term. The researchers also noted that, though this change would mean total additional costs to the Texas juvenile system, estimated to be approximately \$160 million for one year of arrest and adjudication of all seventeen-year-olds in the system,¹³⁴ it would also mean an approximate savings of \$104 million in the adult system after *removing* all seventeen-year-old offenders to the juvenile system.¹³⁵ An additional long-term benefit would come with the reduction of the recidivism rate, a potential savings of an additional \$4 million.¹³⁶ With incarceration being a predictor of future behavior, a reduction in recidivism offers not only a financial reward, but also a potential reduction in future victimization.

D. Proposal

Various options exist for reconciling these noted discrepancies, most requiring extensive adjustments and some requiring a complete overhaul of the criminal justice system. The two most realistic and promising options are to: (1) raise the age of majority for criminal offenses to, at a minimum, age twenty-one, and at a maximum, age twenty-five; or (2) create a separate court for young adult offenders, including special correctional facilities similar to current youth facilities. If, as neurological studies seem to show, there is

131. Michele Dietch, Rebecca Breeden & Ross Weingarten, *Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas*, 40 AM. J. CRIM. L. 1, 2 (2012).

132. *Id.*

133. *Id.*

134. *Id.* at 46. This estimate was based on the costs of arrest, court involvement, juvenile probation, and Texas Juvenile Justice Department commitment. *Id.*

135. *Id.* at 48. The study also noted other significant benefits besides financial, such as a reduction in the number of individuals entering the adult system. *Id.* at 50.

136. *Id.* at 51–52.

no significant difference in the decision-making capabilities of a seventeen-year-old and a twenty-one-year-old, then there should be no policy differences in how they are viewed by, and handled within, the criminal system. If the age of majority is changed, young adults would be given the same opportunity for rehabilitation and behavioral adjustments without the damage of a criminal record, as the juvenile system presently provides. Compared to the creation of a new court, this is the most practical solution because it would only require the absorption of an additional age group into an existing system.

The alternative, creating a separate court system, would require a greater overhaul of the current system, establishing a new set of rules, new court dockets, etc. Though likely to be expensive in the beginning, this method leaves the opportunity to create rules and guidelines designed to serve the needs of this specific age classification, rather than applying identical standards as those applied to younger juveniles. This new system would also have the possibility of absorbing part of the current juvenile docket, likely juveniles who currently qualify for transfer to criminal court, creating a court system narrowly tailored to serve the specific needs of maturing young adults. These ideas are obviously not revolutionary, or even new, as other countries have taken similar approaches.

1. Actions Taken by Other Countries

The United Kingdom is currently working on addressing the issue of young adult offenders and the impact of criminalization, establishing a commission to report on the effects of the criminal system on young adults and promote changes within the system.¹³⁷ Germany has taken it a step further. In Germany, all young adults aged eighteen to twenty-one are transferred to the juvenile courts, and the courts have the discretion to choose sentencing according to juvenile or adult laws based on the apparent maturity level of each offender.¹³⁸ Generally, the more serious cases, with a potential for a more severe outcome, are handled in the juvenile courts, while minor offenses are transferred to the adult system.¹³⁹

137. See *U.K. Transition to Adulthood*, T2A ALLIANCE, <http://www.t2a.org.uk/t2a-alliance/> (last visited May 12, 2017). The Transition to Adulthood Alliance is a London-based organization established in 2008 to “raise awareness of the distinct needs of young adults, aged 18–24, in the criminal justice system.” *Id.*

138. See T2A, *YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES*, KING’S COLL. LONDON INT. CTR. FOR PRISON STUDIES 3 (2010).

139. *Id.*

In 2001, Austria and Lithuania became more flexible with sentencing young adults, also allowing the court discretion in sentencing based on the perceived personality and maturity of the offender.¹⁴⁰ Both of these methods have managed to straddle the line between juvenile and adult offenders, but have not officially taken the step to extend the juvenile age of majority completely. However, in New South Wales, Australia, the legislature has recently taken steps to create a specific community-based order for young adults, with a focus on dealing with the specific rehabilitative needs of those in the program.¹⁴¹ The order is targeting young adults with a moderate to high potential for recidivism and would carry shorter sentencing terms, recognizing that “shorter interventions are generally more useful for young people in terms of promoting their rehabilitation.”¹⁴² Being a new initiative, I was unable to find any real data available showing the immediate success of this program.

2. Recent State Actions

In the United States, some states and private organizations have taken steps to deal specifically with the needs of young adults charged with certain offenses, typically substance abuse-related, where diversion is proven more effective than prosecution. For example, New Hampshire police have joined forces with the courts in implementing a diversion program for drug and alcohol related-offenses, focusing on young adults between the ages of sixteen and twenty, attempting to prevent these young adults from the burden of a criminal record.¹⁴³ Michigan uses a “wraparound model,” utilizing personal assessments to design “packages of support” for individual offenders, and creating specific programs designed to assist young adult offenders transitioning out of the court system.¹⁴⁴ One groundbreaking community-based program in Oregon,¹⁴⁵ whose mission is to address the reintegration of young adult offenders from prison back into society, using education, drug treatment,

140. *Id.*

141. *Id.* at 4.

142. *Id.*

143. *Id.* at 5. See also *Valley Court Diversion Programs offers Alternative Programs for Youth and Adults*, VALLEY COURT DIVERSION PROGRAMS, <http://www.vcdp.org> (last visited Jan. 2, 2016), for a list of available programs.

144. T2A, *supra* note 138, at 5; see also *Michigan Youth Reentry Model*, MICH. COUNCIL ON CRIME & DELINQUENCY (Sept. 2011), https://www.michigan.gov/documents/dhs/Michigan_Youth_Re-entry_Model_420255_7.pdf.

145. The program is a partnership composed of the Multnomah Court Sheriff's Office, the Department of Community Justice, and Volunteers of America Oregon. Community Partners Reinvestment Project (CPR), *The CPR Jail Program*, VOLUNTEERS OF AMERICA—OREGON, http://www.voaor.org/pdf_files/cpr-jail-program-report (last visited Dec. 28, 2015).

and job skill development, demonstrated reduced recidivism rates; reduction in severity of addiction; and improvement in education, employment, and housing situation.¹⁴⁶ These individual state actions show an understanding within the system that changes need to be made for the criminal justice system to better serve the needs of the community. The next step is analyzing these changes to determine what is most effective and implementing them throughout the United States.

V. CONCLUSION

Public policy demands a criminal system that effectively balances the needs of victims with the potential for offender rehabilitation. This requires a willingness within society to make adjustments in light of ever-changing scientific and psychological advancements. The difficulty lies in determining where to draw the line. Based on the results of current scientific and behavioral studies, there is adequate reasoning for adjusting the age of majority beyond the strict bright-line age of eighteen when it means a greater potential for remolding criminal young adults into productive members of society. Admittedly, this transformation would require significant modifications in both the juvenile and adult criminal systems, the greatest burden being a financial one. Though the rehabilitation model is slowly making its way back into the criminal system, it is not enough to influence significant change. Rehabilitation means nothing if we also saddle the offender with the label of an ex-convict or criminal. Rather, making the necessary adjustments to the dividing line between youth and young adult by raising the age of majority would not only mitigate the possibility of turning young adults into criminals, but it also provides a greater opportunity to work with moldable young adults to change the poor-decision-making processes, ultimately reducing recidivism and additional victimization.

146. *Id.* at 5, 7. The CPR Jail Program's self evaluation of program participants after five years has seen as much as a seventy-five percent reduction in reconviction for a felony offense, and sixty-one percent were employed as of 2010. *Id.* at 5.